

1 Danielle R. Pena, Esq., SBN 286002  
2 [dpena@PHGLawGroup.com](mailto:dpena@PHGLawGroup.com)  
3 PHG Law Group  
4 501 West Broadway, Suite 1480  
5 San Diego, CA 92101  
6 Telephone: (619) 826-8060  
7 Facsimile: (619) 826-8065

8 James S. Terrell, Esq. SBN 170409  
9 [jim@talktoterrell.com](mailto:jim@talktoterrell.com)  
10 115411 Anacapa Road  
11 Victorville, CA 92392  
12 Telephone: (760) 561-2699  
13 Facsimile: (760) 952-1085

14 Sharon J. Brunner, Esq. SBN 229931  
15 [Sharon.j.brunner@gmail.com](mailto:Sharon.j.brunner@gmail.com)  
16 Law Office of Sharon J. Brunner  
17 14393 Park Avenue, Suite 101  
18 Victorville, CA 92392  
19 Telephone: (760) 243-9997  
20 Facsimile: (760) 843-8155

21 Attorneys for Plaintiffs

22 UNITED STATES DISTRICT COURT  
23 CENTRAL DISTRICT OF CALIFORNIA

24 FRANCES ENYART, Individually,  
25 and as Successor in Interest to  
WILLIAM ENYART, GREGORY  
26 ENYART, as an Individual, and  
AMANDA KELLEY as GUARDIAN  
27 AD LITEM TO A.E.,

28 Plaintiffs,

v.

COUNTY OF SAN BERNARDINO,  
AARON CONLEY, DEPUTY C.  
UMPHLETT, ROD SKAGGS,  
DEPUTY SNOW, DEPUTY SILVA,  
and DOES 1-10, inclusive,

Defendants.

Grace Jun, Esq., SBN 287973  
[grace@gracejunlaw.com](mailto:grace@gracejunlaw.com)  
501 West Broadway, Suite 1480  
San Diego, CA 92101  
Telephone: (310) 709-4012

Joseph M. McMullen, Esq., SBN 246757  
[joe@jmm-legal.com](mailto:joe@jmm-legal.com)  
Law Offices of Joseph M. McMullen  
501 West Broadway, Suite 1510  
San Diego, CA 92101  
Telephone: (619) 501-2000  
Facsimile: (619) 615-2264

Case No. 5:23-cv-00540-RGK-SHK

**PLAINTIFFS' SECOND TRIAL BRIEF**

FPTC: May 6, 2024, 9:00 a.m.  
Trial: May 21, 2024, 9:00 a.m.

Assigned to:  
Honorable R. Gary Klausner  
United States District Judge

Referred to:  
Honorable Shashi H. Kewalramani  
United States Magistrate Judge

I.

## **FACTUAL INTRODUCTION**

November of 2023, and in January of 2024, Plaintiffs served a Request for Production on County Defendants seeking medical policies related to alcohol withdrawals and detoxification. (Exhibits 1 and 2.) After several meet and confer discussions, County Defendants repeatedly represented that all responsive policies had been produced. (Exhibit 3.) Importantly, none of the policies produced by County Defendants were *medical* policies; rather, the policies produced were all correctional policies.

On May 16, 2024, *five days before trial*, County Defendants produced 157 medical policies, none of which included the actual alcohol withdrawal policy. (Exhibit 4.) However, there was an index produced with the 157 policies. The index indicates that an alcohol withdrawal policy does exist.

On May 16, 2024, Plaintiffs requested a discovery conference. Magistrate Kewalramani scheduled a conference for later that day at 2:00 p.m. Plaintiffs requested that the County be ordered to produce the alcohol withdrawal policy and other related medical policies. The Magistrate ordered the County to produce all medical policies relevant to alcohol withdrawal and to provide a declaration from the chief medical officer averring that all relevant policies have been searched for and produced by close of business on May 17, 2024. (Exhibit 5.) Following the discovery conference, the Friday before a Tuesday trial call, County Defendants finally produced the alcohol withdrawal policy.

On that same day, County Defendants provided their amended exhibit list. County Defendants marked 10 *medical* policies as exhibits they intend to use at trial. (Exhibit 6.) Because of the highly relevant nature of these medical policies, Plaintiffs will also rely on some of 10 medical policies, and others, in their case-in-chief. However, County Defendants should not be permitted to violate the discovery rules, produce five days before trial highly relevant evidence Plaintiffs

1 repeatedly requested during discovery last year and this year, and use that evidence  
2 at trial *without* consequence.

3           Accordingly, pursuant to Rule 37(c)(1), Plaintiffs seek the following  
4 sanctions:

- 5       1. To permit Plaintiffs' experts to offer opinions relating to the 10 medical  
6            policies<sup>1</sup>;

7       2. To admit the date Request for Production No 10. And No. 29 were  
8            propounded, the date of County Defendants response, and the date of the  
9            chief medical officer's declaration; and

10      3. To inform the jury that County Defendants falsely stated all relevant  
11            policies had been produced to Plaintiffs and withheld its alcohol  
12            withdrawal policy until five days before trial.

II.

**DEFENDANTS SHOULD BE SANCTIONED PURSUANT TO**  
**RULE 37(c)(1)**

#### A. The Legal Standard for Rule 37 Sanctions

17 Rule 34, which allows any party to request the inspection or production of  
18 documents from another party, is one of the primary discovery tools available to  
19 litigants in the federal courts. *Keith H. v. Long Beach Unified Sch. Dist.*, 228  
20 F.R.D. 652, 655 (C.D. Cal. 2005). In responding to requests under Rule 34, “[a]  
21 party has an obligation to conduct a reasonable inquiry into the factual basis of its  
22 discovery responses.” *Nat'l Acad., of Recording Arts & Sciences, Inc. v. On Point*  
23 *Events, L.P.*, 256 F.R.D. 678, 680 (C.D. Cal. 2009); *Vetstem Biopharm, Inc. v. Cal.*  
24 *STEM Cell Treatment Ctr., Inc.*, 2023 U.S. Dist. LEXIS 181547, \*24 (C.D. Cal.  
25 2023.)

27 <sup>1</sup> The parties have met and conferred on this issue. The parties agree to permit  
28 Plaintiffs' experts to provide opinions related to the medical policies and to be  
examined on such opinions.

1           Federal Rule of Civil Procedure 26(e) imposes a duty on a party to  
2 supplement or correct prior discovery responses “in a timely manner if the party  
3 learns that in some material respect the disclosure or response is incomplete or  
4 incorrect.” Fed. R. Civ. P. 26(e)(1)(A). This affirmative duty continues “even after  
5 the discovery cut-off date.” *Hernandez v. Polanco Enters., Inc.*, 19 F. Supp. 3d  
6 918, 933 (N.D. Cal. 2013); see also *Sanders v. Univ. of Idaho Coll. of Law*, 2022  
7 U.S. Dist. LEXIS 19012, at \*3 (D. Idaho 2022) (collecting cases).

8           Federal Rule of Civil Procedure 37(c)(1) “authorizes a court to sanction a  
9 party for failing to produce information required by Rule 26(a) or (e)” by  
10 prohibiting that party from using “the withheld information at trial unless the failure  
11 was substantially justified or harmless.” *Fast v. GoDaddy.com LLC*, 340 F.R.D.  
12 326, 335-36 (D. Ariz. 2022). Rule 37(c)(1) also permits courts to impose other  
13 sanctions, including “inform[ing] the jury of the party's failure,” “designating facts  
14 be taken as established for purposes of the action,” or “other appropriate sanctions.”  
15 Fed. R. Evid. 37(c)(1)(A)—(B); Fed. R. Evid. 37(b)(2)(A)(i)—(vi).

16           In *Fast v. GoDaddy.com LLC*, 340 F.R.D. 326, 354 (D. Az. 2022), the court  
17 permitted defendant to inform the jury pursuant to Rule 37(c)(1)(B) that plaintiff  
18 had withheld information in discovery. The court in *Fast* explained, blocking the  
19 use of information at trial is “no penalty when the withheld information is  
20 unfavorable to the party that failed to disclose it.” *Id.* (citing Fed. R. Civ. P.  
21 37(c)(1)(A)-(C)). See *K.J.P. v. County of San Diego*, 621 F. Supp. 3d 1097, 1143-  
22 44 (S.D. Cal. 2022) (jury properly informed of defendant's failure to supplement  
23 discovery); *N.W. v. City of Long Beach*, 2016 U.S. Dist. LEXIS 194469, at \* 4  
24 (C.D. Cal. 2016) (granting motion precluding defendants from introducing evidence  
25 at trial that was not produced in response to discovery requests and directing  
26 plaintiff to submit proposed adverse inference instruction that the undisclosed  
27 evidence would have been unfavorable to defendants); *Estakhrian v. Obenstine*,  
28 2016 U.S. Dist. LEXIS 25376, at \*12 (C.D. Cal 2016) (jury to be informed by

1 adverse inference instruction or in some other manner determined by District Court  
2 that defendant willfully and in bad faith refused to disclose to plaintiff relevant  
3 documents in his possession).

4        *B. Rule 37(c)(1) Sanctions Are Warranted*

5            As this Court is aware, this case is about the failure to identify and treat Mr.  
6 Enyart for alcohol withdrawal, which directly and proximately resulted in Mr.  
7 Enyart's death. Accordingly, medical policies relating to alcohol withdrawal and  
8 alcohol detox are highly relevant in this case, which is why Plaintiffs requested the  
9 policies in November of 2023. Moreover, the relevant nature of these policies is  
10 apparent based on both parties' intent to use them at trial despite their belated  
11 production.

12            However, the County should not be permitted to violate the discovery rules,  
13 produce highly relevant evidence five days before trial, and use that evidence at  
14 trial *without* recourse. Because Plaintiffs intend to use some of these highly  
15 relevant medical policies during trial, *exclusion of the evidence is not appropriate*  
16 *in this case.*

17        *C. Defendants Failure to Timely Produce the Medical Policies is Not*  
18            *Substantially Justified or Harmless*

19            The party facing sanctions bears the burden of proving that its failure to  
20 disclose the required information was substantially justified or is harmless. *Torres*  
21 *v. City of L.A.* 548 F.3d 1197, 1213 (9th Cir.2008). In the May 16, 2024, email  
22 containing the 157 medical policies, Counsel for Defendants stated, "I am attaching  
23 what was sent to me last night in terms of policies. I'm not sure why it wasn't  
24 located before." (Exhibit 4.)

25            A delay may qualify as harmless as provided by Rule 37(c)(1) if it does not  
26 deprive the opposing party of the opportunity for discovery of what a witness or  
27 witnesses may say during trial testimony, or further discovery based on information  
28 that comes to light during witness depositions. *Padilla v. Beard*, 2017 U.S. Dist.

1 LEXIS 57064, \*8-9 (E.D. Cal. 2017). Here, Defendants' eleventh-hour production  
2 is not harmless because Defendants have represented that they intend to  
3 affirmatively use the 10 medical policies with several percipient witnesses that  
4 treated Mr. Enyart. Defendants intend to elicit testimony regarding the existence of  
5 relevant medical policies and training on those policies. Plaintiffs did not have the  
6 opportunity to pursue discovery on this subject matter, such as serving special  
7 interrogatories and Requests for Productions regarding the treating providers'  
8 understanding and training of relevant medical policies. Furthermore, had the  
9 medical policies been produced in a timely fashion, Plaintiffs would have deposed  
10 the person most knowledgeable about said policies and training. This grossly  
11 belated production also denied Plaintiffs the appropriate time to strategize a  
12 counter-defense.

II.

## **CONCLUSION**

15        Accordingly, Plaintiffs request the following sanctions pursuant to Rule 37  
16        (c)(1):

- 17       1. To permit Plaintiffs' experts to offer opinions relating to the 10 medical  
18            policies;

19       2. To admit the date Request for Production No 10. And No. 29 were  
20            propounded, the date of County Defendants response, and the date of the  
21            chief medical officer's declaration; and

22       3. To inform the jury that County Defendants falsely stated that all relevant  
23            policies had been produced to Plaintiffs, and withheld its alcohol  
24            withdrawal policy until five days before trial.

26 The undersigned, counsel of record for Plaintiffs Frances Enyart, Gregroy  
27 Enyart, A.E. by and through her Guardian Ad Litem, Amanda Kelley, individually  
28 and as successor in interest to the Estate of William Enyart, (collectively

1 “Plaintiffs”), certifies that this brief contains 1,423 words, which complies with the  
2 word limit of L.R. 11-6.1. Additionally, counsel certifies that this brief contains  
3 less than 20 pages, which complies with the page limit of Judge Klausner’s  
4 Standing Order.

5  
6 **PHG Law Group**

7 Dated: May 20, 2024

8 by: s/ Danielle R. Pena  
Danielle R. Pena, Esq.  
[dpena@PHGLawGroup.com](mailto:dpena@PHGLawGroup.com)  
9 Attorneys for Plaintiffs

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28